THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.13893 of 2006

DATED 27.12.2006

Between:

Chandupatla Gurumurthy. .... PETITIONER

versus

Municipal Corporation of Hyderabad,
represented by Additional Commissioner,
Secunderabad and another. .... RESPONDENTS

WRIT PETITION NO.13893 of 2006

ORDER:

This Court ordered Notice Before Admission on 7.7.2006 and status quo was granted for a limited period and the said limited status quo order was extended from time to time.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the 1st respondent-Corporation contained in Notice No.2992/TP/Municipal Corporation of Hyderabad/SD/2005, dated 24.6.2006 calling upon the petitioner/tenant to vacate the premises bearing No.3-4-235, Mahankali Street, Secunderabad, is arbitrary and without jurisdiction and consequently direct the respondents to forbear from dispossessing the petitioner from the ground floor portion of the said premises except in accordance with law and pass such other suitable orders.

3. The writ petitioner states that he is a tenant of premises bearing No.3-4-235, Mahankali Street, Secunderabad, insofar as ground floor is concerned in respect of 840 square feet (approximately) and he has been carrying on business in the said demised premises in the name

and style of 'Chandupatla Prakash and Chandupatla Gurumurthy' (cloth business). It is also stated that the petitioner was a tenant of the old structure, which was demolished and the present building is constructed. Several other factual details are narrated and specific stand is taken that in order to get the petitioner evicted in an indirect manner, the landlord-2nd respondent herein got issued notice of demolition through the 1st respondent-Corporation to the effect that the construction of the present building is in deviation to the sanctioned plan and assailing the said notice, the petitioner filed OS No.825 of 1999 on the file of XVIII Junior Civil Judge-cum-Additional Rent Controller, Secunderabad for an injunction and the said suit was opposed by the landlord and also the Municipal Corporation of Hyderabad on the ground that the petitioner has no locus standi to challenge the notice of demolition and the said contention was accepted and the said suit in OS No.825 of 1999 was dismissed and the judgment and decree made in OS No.825 of 1999 was confirmed in appeal in AS No.93 of 2003 on the file of I Additional Chief Judge, City Civil Court, Secunderabad and also by this Court in Second Appeal No.1357 of 2004, dated 20.9.2005. It is also stated that the 1st respondent issued impugned notice dated 24.6.2006 calling upon the petitioner to vacate the premises, which was constructed in deviation of the sanctioned plan, within seven days, and on 30.6.2006, it is stated that the petitioner had submitted a representation protesting the said notice and requested the Corporation not to disturb his possession. Several other factual details are narrated in paragraphs 3 and 4 of the affidavit filed in support of the Writ Petition.

4. Counter affidavits are filed by the 1st respondent and 2nd respondent.

5. In the counter affidavit filed by the Assistant City Planner (CD),

Municipal Corporation of Hyderabad, it is stated that the 1st respondent-Corporation is not aware of the terms and conditions of the lease between the 2nd respondent and the petitioner, and the 1st respondent is not concerned with the same. The 1st respondent-Corporation is concerned only with the extent of granting building permission and see that the building constructed is in accordance with the sanctioned plan. If the parties made constructions in deviation of the sanctioned plan, the 1st respondent-Corporation is duty bound to remove such deviations and regulate the constructions as per the provisions of Hyderabad Municipal Corporation Act, 1955 and the Building Bye-Laws. It is also stated that the 1st respondent-Corporation issued required statutory notice and the filing of the suit OS No.852 of1999 and the other judicial proceedings also had been referred to. Specific stand is taken that the 1st respondent issued the impugned notice in discharge of its obligations under the provisions of Hyderabad Municipal Corporation Act, 1955.

6. The 2nd respondent filed counter affidavit denying several of the averments. Specific stand is taken that the petitioner is wantonly declaring himself as tenant though he is an encroacher as held by this Court in Second Appeal No.1357 of 2004 and therefore claiming himself as tenant is only to mislead the Court and the petitioner has no subsisting right over the property. Several other factual details are narrated in paragraphs 5 to 8 of the counter affidavit filed by the 2nd respondent.

7. In the light of the judicial proceedings already referred to supra, the writ petitioner has no right to maintain this Writ Petition. The 1st respondent-Corporation issued notice only for the purpose of removing

the deviations from the sanctioned plan. It is needless to say that the 1st respondent-Corporation is acting in discharge of its statutory duties and obligations contemplated by Hyderabad Municipal Corporation Act, 1955. In the light of the judicial proceedings stated supra, the petitioner cannot take advantage of the wording in the impugned notice and cannot challenge the same especially having been unsuccessful in the prior judicial proceedings upto the stage of the Second Appeal. Even if the explanation or representation submitted by the petitioner to be taken into consideration, nothing fruitful would turn out and the stand taken by the petitioner is not *bona fide*. Hence, liberty is given to the 1st respondent-Corporation to further proceed with in accordance with law if any deviations are there to the sanctioned plan.

8. With the above observation, the Writ Petition is dismissed with costs.

27.12.2006

SSR
LR COPY TO BE MARKED: YES/NO.